

## § 364.101

Pursuant to section 39, this part establishes safety and soundness standards by guideline.

### § 364.101 Standards for safety and soundness.

(a) *General standards.* The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1), as set forth as appendix A to this part, apply to all insured state nonmember banks and to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act.

(b) *Interagency Guidelines Establishing Information Security Standards.* The Interagency Guidelines Establishing Information Security Standards prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)), and with respect to the proper disposal of consumer information requirements pursuant to section 628 of the Fair Credit Reporting Act (15 U.S.C. 1681w), as set forth in appendix B to this part, apply to all insured state nonmember banks, insured state licensed branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers). The interagency regulations and guidelines on identity theft detection, prevention, and mitigation prescribed pursuant to section 114 of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. 1681m(e), are set forth in §§ 334.90, 334.91, and Appendix J of part 334.

[63 FR 55488, Oct. 15, 1998, as amended at 66 FR 8638, Feb. 1, 2001; 69 FR 77619, Dec. 28, 2004; 72 FR 63764, Nov. 9, 2007]

#### APPENDIX A TO PART 364—INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

##### TABLE OF CONTENTS

###### I. Introduction

- A. Preservation of existing authority.
- B. Definitions.

## 12 CFR Ch. III (1–1–10 Edition)

### II. Operational and Managerial Standards

- A. Internal controls and information systems.
- B. Internal audit system.
- C. Loan documentation.
- D. Credit underwriting.
- E. Interest rate exposure.
- F. Asset growth.
- G. Asset quality.
- H. Earnings.
- I. Compensation, fees and benefits.

### III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice

- A. Excessive compensation.
- B. Compensation leading to material financial loss.

#### I. INTRODUCTION

i. Section 39 of the Federal Deposit Insurance Act<sup>1</sup> (FDI Act) requires each Federal banking agency (collectively, the agencies) to establish certain safety and soundness standards by regulation or by guideline for all insured depository institutions. Under section 39, the agencies must establish three types of standards: (1) Operational and managerial standards; (2) compensation standards; and (3) such standards relating to asset quality, earnings, and stock valuation as they determine to be appropriate.

ii. Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

iii. Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to

<sup>1</sup>Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1) was added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2236 (1991), and amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102-550, 106 Stat. 3895 (1992) and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160 (1994).